

SOLICITOR

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	JUL - 5 2007	REPORT ON THE FILING OR DETERMINATION OF AN OPINION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 07-03403 EMC	DATE FILED 6/28/07	U.S. DISTRICT COURT Northern District of California
PLAINTIFF KYPHON INC		DEFENDANT COZMED
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,607,544		(See attached Complaint)
2 6,623,505		
3 6,979,341		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wieking	(BY) DEPUTY CLERK Simone Voltz	DATE July 2, 2007
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

COPY

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ORIGINAL
FILED

JUN 28 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KYPHON INC.,

Plaintiff,

v.

COZMED, LLC and
PETER K. PARK, an individual,

Defendant(s).

C

07

Case No.

3403

COMPLAINT FOR PATENT
INFRINGEMENT

EMC

DEMAND FOR JURY TRIAL

Plaintiff Kyphon Inc., for its Complaint, alleges:

PARTIES

1. Plaintiff Kyphon is a corporation incorporated under the laws of the State of Delaware with its principal place of business at 1221 Crossman Avenue, Sunnyvale, California 94089.
2. Kyphon is a pioneer in the field of kyphoplasty, a minimally invasive surgical procedure for repairing spinal fractures. Such fractures may result from osteoporosis, cancer, or medical treatments such as chemotherapy. Balloon kyphoplasty involves the surgical insertion of a balloon into the fractured bones of the spine to raise them and restore them to their correct position. As a result, kyphoplasty can help relieve the significant back pain and stooped posture that many spinal fracture sufferers experience.

3. Defendant Cozmed, LLC, sometimes referred to as "Cozumed," is a California limited liability corporation with its principal place of business at 41909 Albrae Street, Fremont, California, 94538.

4. On information and belief, defendant Peter K. Park is the President and Operating Manager for Cozmed and controls the decisions and actions undertaken by Cozmed.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and § 1338(a) (patents).

6. Cozmed is subject to personal jurisdiction in this District because its principal place of business is in this District and Cozmed has committed acts of infringement in this District.

7. Mr. Park is subject to personal jurisdiction in this District because he has worked or lived in this District and committed acts of infringement in this District.

8. Venue is proper under 28 U.S.C. §§ 1391, 1400(b).

INTRADISTRICT ASSIGNMENT

9. Pursuant to Civil L.R. 3-2(c), the Intradistrict Assignment rules do not apply to this Complaint.

FIRST CAUSE OF ACTION

(Infringement of U.S. Patent No. 6,607,544)

10. Kyphon is the owner by assignment of all rights, title, and interest in and to United States Patent No. 6,607,544 ("the '544 patent"), issued on August 19, 2003 and entitled "Expandable Preformed Structures for Deployment in Interior Body Regions." The '544 patent is attached as Exhibit A.

11. Cozmed and Mr. Park are infringing or have infringed the '544 patent directly or indirectly under 35 U.S.C. § 271 by making, using, offering for sale, or selling products for use in performing kyphoplasty. Defendants' products encompass an invention claimed by the '544 patent or are a substantial part of such an invention. Defendants' products are specially made or

1 adapted for use in an invention claimed by the '544 patent and are not staple articles or
2 commodities of commerce suitable for substantial non-infringing uses. Upon information and
3 belief, Defendants knowingly and actively have instructed or continue to instruct purchasers in
4 the use of their products in a manner that infringes or would infringe the '544 patent.

5 12. Defendants' infringement is without the consent or other authority of Kyphon.
6 Neither Cozmed nor Mr. Park is licensed under the '544 patent.

7 13. On information and belief, Defendants have infringed or are infringing the '544
8 patent with knowledge of Kyphon's patent rights, but without reasonable basis for believing that
9 their conduct is lawful. Defendants' infringement of the '544 patent has been and continues to be
10 willful.

11 14. Kyphon is entitled to damages for Defendants' infringement of the '544 patent and
12 trebled damages for Defendants' willful infringement of the '544 patent.

13 15. Kyphon has no adequate legal remedy. Unless enjoined by this Court, Defendants
14 will continue their acts of infringement to Kyphon's substantial and irreparable harm. Under 35
15 U.S.C. § 283, Kyphon is entitled to an injunction barring Defendants from further infringement of
16 the '544 patent.

17 SECOND CAUSE OF ACTION

18 (Infringement of U.S. Patent No. 6,623,505)

19 16. Kyphon is the owner by assignment of all rights, title, and interest in and to United
20 States Patent No. 6,623,505 ("the '505 patent"), issued on September 23, 2003 and entitled
21 "Expandable Structures for Deployment in Interior Body Regions." The '505 patent is attached as
22 Exhibit B.

23 17. Cozmed and Mr. Park are infringing or have infringed the '505 patent directly or
24 indirectly under 35 U.S.C. § 271 by making, using, offering for sale, or selling products for use in
25 performing kyphoplasty. Defendants' products encompass an invention claimed by the '505
26 patent or are a substantial part of such an invention. Defendants' products are specially made or
27 adapted for use in an invention claimed by the '505 patent and are not staple articles or
28 commodities of commerce suitable for substantial non-infringing uses. Upon information and

1 belief, Defendants knowingly and actively have instructed or continue to instruct purchasers in
2 the use of their products in a manner that infringes or would infringe the '505 patent.

3 18. Defendants' infringement is without the consent or other authority of Kyphon.
4 Neither Cozmed nor Mr. Park is licensed under the '505 patent.

5 19. On information and belief, Defendants have infringed or are infringing the '505
6 patent with knowledge of Kyphon's patent rights, but without reasonable basis for believing that
7 their conduct is lawful. Defendants' infringement of the '505 patent has been and continues to be
8 willful.

9 20. Kyphon is entitled to damages for Defendants' infringement of the '505 patent and
10 trebled damages for Defendants' willful infringement of the '505 patent.

11 21. Kyphon has no adequate legal remedy. Unless enjoined by this Court, Defendants
12 will continue their acts of infringement to Kyphon's substantial and irreparable harm. Under 35
13 U.S.C. § 283, Kyphon is entitled to an injunction barring Defendants from further infringement of
14 the '505 patent.

15 **THIRD CAUSE OF ACTION**

16 (Infringement of U.S. Patent No. 6,979,341)

17 22. Kyphon is the owner by assignment of all rights, title, and interest in and to United
18 States Patent No. 6,979,341 ("the '341 patent"), issued on December 27, 2005 and entitled
19 "Expandable Preformed Structures for Deployment in Interior Body Regions." The '341 patent is
20 attached as Exhibit C.

21 23. Cozmed and Mr. Park are infringing or have infringed the '341 patent directly or
22 indirectly under 35 U.S.C. § 271 by making, using, offering for sale, or selling products for use in
23 performing kyphoplasty. Defendants' products encompass an invention claimed by the '341
24 patent or are a substantial part of such an invention. Defendants' products are specially made or
25 adapted for use in an invention claimed by the '341 patent and are not staple articles or
26 commodities of commerce suitable for substantial non-infringing uses. Upon information and
27 belief, Defendants knowingly and actively have instructed or continue to instruct purchasers in
28 the use of their products in a manner that infringes or would infringe the '341 patent.

1 24. Defendants' infringement is without the consent or other authority of Kyphon.
2 Neither Cozmed nor Mr. Park is licensed under the '341 patent.

3 25. On information and belief, Defendants have infringed or are infringing the '341
4 patent with knowledge of Kyphon's patent rights, but without reasonable basis for believing that
5 their conduct is lawful. Defendants' infringement of the '341 patent has been and continues to be
6 willful.

7 26. Kyphon is entitled to damages for Defendants' infringement of the '341 patent and
8 trebled damages for Defendants' willful infringement of the '341 patent.

9 27. Kyphon has no adequate legal remedy. Unless enjoined by this Court, Defendants
10 will continue their acts of infringement to Kyphon's substantial and irreparable harm. Under 35
11 U.S.C. § 283, Kyphon is entitled to an injunction barring Defendants from further infringement of
12 the '341 patent.

13 WHEREFORE, Kyphon requests judgment:

14 A. Declaring that Cozmed and Mr. Park have infringed the '544, '505, and '341
15 patents;

16 B. Preliminarily and permanently enjoining Cozmed and Mr. Park and their officers,
17 directors, employees, agents, servants, successors, assigns, or any other person or
18 entity acting in privity in concert with them from further infringement of the '544,
19 '505, and '341 patents;

20 C. Awarding Kyphon its damages, together with pre-judgment interest and costs, for
21 Cozmed and Mr. Park's infringement of the '544, '505, and '341 patents, and
22 increasing said damages by up to three times under 35 U.S.C. § 284;

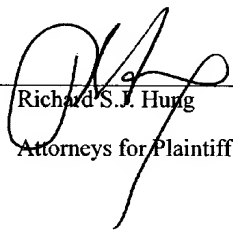
23 D. Declaring this to be an exceptional case under 35 U.S.C. § 285 and awarding
24 Kyphon its reasonable attorneys' fees, costs, and disbursements in this action, with
25 interest; and

26 E. Awarding Kyphon such other and further relief as this Court may deem just and
27 proper.
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1 Dated: June 28, 2007

MICHAEL A. JACOBS
GRANT L. KIM
RICHARD S.J. HUNG
MORRISON & FOERSTER LLP

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5 By:


Richard S.J. Hung

Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Kyphon Inc. demands a trial by jury of any and all issues triable of right by a jury in the above-captioned action.

Dated: June 28, 2007

MICHAEL A. JACOBS
GRANT L. KIM
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By: 

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